UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

PERTAINS TO THE FOLLOWING CASES:

IRVING H. PICARD,

Plaintiff,

ν.

FRANK J. LYNCH a.k.a. FRANK J. LYNCH, III,

Defendant.

IRVING H. PICARD,

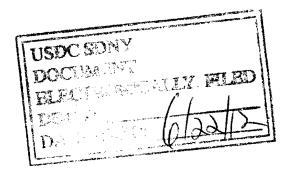
Plaintiff,

v.

F&P LYNCH PARTNERSHIP, L.P., et al.,

Defendants.

12 MC 115 (JSR)



Adv. Pro. No. 10-04629

11 Civ. 09215 (JSR)

Adv. Pro. No. 10-05109

11 Civ. 09216 (JSR)

STIPULATION AND ORDER

JED S. RAKOFF, U.S.D.J.

WHEREAS, Irving H. Picard (the "Trustee"), as trustee for the substantively

consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. ("SIPA") and the estate of Bernard L. Madoff, filed complaints (the "Complaints") in the Bankruptcy Court in the above-captioned adversary proceedings on December 1, 2010 (Adv. Proc. No. 10-04629) and December 2, 2010 (Adv. Proc. No. 10-05109);

WHEREAS, defendant Frank J. Lynch a.k.a. Frank J. Lynch, III (the "Lynch Defendant") filed an motion in the District Court to withdraw the Bankruptcy Court reference ("Lynch Withdrawal Motion") on December 16, 2011, arguing, *inter alia*, that issues related to (i) 11 U.S.C. § 546(e); (ii) antecedent debt under 11 U.S.C. § 548; and (iii) 15 U.S.C. § 78fff-2(c)(3) and the customer property fund, raised questions of non-bankruptcy law;

WHEREAS, defendants F&P Lynch Family Partnership, L.P., Frank J. Lynch a.k.a. Frank J. Lynch, III, and Patricia C. Lynch (the "Lynch Family Defendants," together with the Lynch Defendant, the "Defendants") filed a motion in the District Court to withdraw the Bankruptcy Court reference ("Lynch Family Withdrawal Motion," together with the Lynch Withdrawal Motion, the "Withdrawal Motions") on December 16, 2011, arguing, *inter alia*, that issues related to (i) 11 U.S.C. § 546(e); (ii) antecedent debt under 11 U.S.C. § 548; and (iii) 15 U.S.C. § 78fff-2(c)(3) and the customer property fund, raised questions of non-bankruptcy law;

WHEREAS, in accordance with the schedule established in a joint telephonic conference on April 5, 2012 between the parties and the Court, the Court approved the following briefing and argument schedule in connection with Withdrawal Motions: Trustee and SIPC may each submit one brief responding to the Withdrawal Motions by June 22, 2012; the Defendants, in turn, will collectively submit one reply brief by July 13, 2012; and no oral arguments were scheduled at that time.;

WHEREAS, the Defendants will participate in the consolidated briefing on the merits of certain issues relating to Antecedent Debt pursuant to the Order dated May 16, 2012, No. 12 MC 0115 (S.D.N.Y. May 15, 2012) (ECF No. 107) (the "Antecedent Debt Consolidated Order");

WHEREAS, the Defendants will participate in the consolidated appeal relating to this Court's rulings involving 11 U.S.C. § 546(e) pursuant to the Consent Order Granting Certification Pursuant to Fed. R. Civ. P. 54(b) For Entry of Final Judgment Dismissing Certain Claims and Actions dated May 12, 2012, No. 12 MC 0115 (S.D.N.Y. May 16, 2012) (ECF No. 109) (the "Section 546 Appeal");

WHEREAS, pursuant to the consolidated briefings, the only remaining asserted basis for withdrawal of the reference, as raised in the Withdrawal Motions, is whether 15 U.S.C. § 78fff-2(c)(3) precludes the Trustee from bringing avoidance actions where he has, as asserted by the Defendants, already recovered sufficient funds to satisfy all customer claims (the "Customer Property Fund Issue");

WHEREAS, this Court has previously declined to withdraw the reference to consider the Customer Property Fund Issue. See Picard v. Flinn Inv., LLC, 463 B.R. 280 (S.D.N.Y. 2011) ("[I]t has long been held that the fund of customer property shall be valued for the purposes of 15 U.S.C. § 78fff-2 (c)(3) as of [the filing date]," and "any different interpretation of 78fff-2(c)(3) would cause the trustee's powers to fluctuate, leading to a logistical nightmare."). See also Picard v. Avellino, 2012 WL 826602 (S.D.N.Y. Feb. 29, 2012); Picard v. Danville Manufacturing Co., 11 Civ. 6573 (S.D.N.Y. June 6, 2012); Picard v. Lucky Co., 11 Civ. 8840 (S.D.N.Y. June 7, 2012); Picard v. Richard Karyo, 11 Civ. 8947 (S.D.N.Y. June 7, 2012);

WHEREAS, pursuant to this Court's previous rulings, the parties agree that no further briefing on the Withdrawal Motions is necessary with respect to the Customer Property Fund

Issue for the reasons stated in the above-referenced rulings;

BASED ON THE FOREGOING, IT IS HEREBY:

ORDERED, that the Withdrawal Motions shall no longer be governed by the briefing and argument schedule described herein which the Court previously approved during a chambers conference on April 5, 2012.

ORDERED, that the Defendants are directed to continue their relevant briefings according to the procedures outlined in the Antecedent Debt Consolidated Order and the Section 546 Appeal.

ORDERED, that for the reasons stated in *Flinn* and the Court's other rulings referenced herein, the Court denies the Withdrawal Motions with respect to the Customer Property Fund Issue and the Clerk of the Court is ordered to close item number one on the dockets of 11 Civ. 09215 and 11 Civ. 09216.

Dated: June 19, 2012

New York, New York

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SO ORDERED.

Dated: June ___, 2012

New York, New York

JED S. RAKOFF, U.S.D.J.

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SO ORDERED.

Dated: June 21, 2012

New York, New York

JED-S. RAKOFF, U.S.D.J